



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2011

Ms. Leila Feldman
General Counsel
Fort Bend Independent School District
16431 Lexington Boulevard
Sugar Land, Texas 77479

OR2011-03987

Dear Ms. Feldman:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 412048.

The Fort Bend Independent School District (the "district") received a request for six categories of information pertaining to two named district employees, including all performance evaluations, commendations, and records of disciplinary action. You state the district will release some of the requested information upon receipt of the production cost. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor does not seek the submitted biographical information we have marked as not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the district is not required to release non-responsive information in response to this request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is

commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). We have determined that for purposes of section 21.355, the word "teacher" means a person who is required to, and does in fact, hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4.

You contend the submitted responsive information in Exhibit B is confidential under section 21.355. You state the two employees to whom the information at issue pertains serve as certified educators under the district's Reserve Officer Training Corps Program. You further assert the teachers at issue held permits under subchapter B of chapter 21 of the Education Code and were engaged in teaching at the time of their evaluations. Upon review, we find a portion of the submitted information consists of an evaluation as contemplated by section 21.355 of the Education Code. Accordingly, the district must withhold this information, which we have marked, under section 21.355. However, we note the remaining information consists of evaluations conducted after the two employees' certifications had expired. The district refers to section 153.1021(h)(1)(A)(iii) of title 19 of the Texas Administrative Code to support its assertion the employees at issue held the appropriate certifications or permits and were engaged in teaching at the time of the evaluations. Section 153.1021 concerns the recognition of creditable years of service claimed for salary increment purposes and states that instructors in Reserve Officer Training Corps (ROTC) programs conducted by local school districts "must be certified or hold an emergency teaching permit," and further states that "an emergency teaching permit need not be renewed as long as the person continues in the ROTC assignment." *See* 19 T.A.C. § 153.1021(h)(1)(A)(iii). Although for the purposes of receiving credit for years of service for salary increment purposes, ROTC instructors who teach while holding emergency teaching permits need not renew the permit as long as the person continues the ROTC assignment, we note that for the purposes of section 21.355, a "teacher" is a person who required to, and does in fact, hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055. *See* ORD 643 at 4. Accordingly, we determine, with respect to the remaining evaluations, the employees at issue did not hold a certificate or permit as required under chapter 21 of the Education Code at the time the evaluations were performed. Thus, we conclude the remaining information does not consist of evaluations as contemplated by section 21.355 of the Education Code, and the district may not withhold any of the remaining responsive information in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

We note that portions of the submitted information may be subject to section 552.117(a)(1) of the Government Code.¹ This section excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests this information be kept confidential pursuant to section 552.024 of the Government Code. *See* Gov't Code §§ 552.117(a)(1), .024(b). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time the governmental body receives the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We have marked the information that may be subject to section 552.117. If the individual whose information is at issue timely requested confidentiality for his personal information under section 552.024, then the district must withhold the information we have marked under section 552.117(a)(1). If the individual did not timely elect to withhold his personal information, then the district may not withhold the information we have marked under section 552.117(a)(1) of the Government Code.²

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. To the extent the individual whose information is at issue timely elected to withhold his personal information, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²Regardless of whether the employee at issue elected to withhold his social security number, we note a governmental body may redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Vanessa Burgess', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 412048

Enc. Submitted documents

c: Requestor
(w/o enclosures)